MOTION FILED
SEP 25 1987

No. 87-326

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

G. D. SEARLE & CO.,

Petitioner,

v.

DEBRA A. and GEORGE SIMON, *et al.*,

Respondents.

Petition For A Writ of Certiorari To The United States Court of Appeals For The Eighth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE PHARMACEUTICAL MANUFACTURERS ASSOCIATION

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF THE PHARMACEUTICAL MANUFACTURERS ASSOCIATION

The Pharmaceutical Manufacturers Association (PMA) respectfully moves this Court for leave to file the attached brief *amicus curiae* in support of G.D. Searle's petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit. The consent of counsel for the petitioner has been obtained. The consent of the attorney for the respondents was requested but refused.

The Pharmaceutical Manufacturers Association is a voluntary national association of more than one

hundred research-based companies that discover, develop and produce most of the prescription drugs used in the United States.

The decision of the Eighth Circuit Court of Appeals permits discovery of aggregate reserve fund estimates established by companies defending multiple plaintiff product liability lawsuits. Many PMA member companies rely on such aggregate reserve fund estimates in creating their defense and settlement strategy. If the Eighth Circuit's decision is allowed to stand, PMA member companies will, to their detriment, be forced to reveal such estimates and significantly alter internal company procedures with respect to the defense and settlement of product liability litigation.

The PMA *amicus curiae* brief sets forth facts, not expressly set forth in petitioner's brief, that outline the increasing exposure of PMA member companies to product liability lawsuits. PMA's *amicus* brief does not repeat or expand on the legal arguments presented by the petitioner.

Respectfully submitted,

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BRIEF AMICUS CURIAE OF THE PHARMACEUTICAL MANUFACTURERS ASSOCIATION

The Pharmaceutical Manufacturers Association (PMA) is a voluntary national association of more than one hundred research-based companies that discover, develop and produce most of the prescription drugs used in the United States. Petitioner, G.D. Searle & Co., is an active PMA member.

This country in recent years has experienced a significant increase in the number of product liability cases brought each year. The pharmaceutical manufacturing industry has not been immune to the effects of this increase. Prescription drug manufacturers are

frequently sued for adverse side effects allegedly caused by the prescription drug, and increasingly are subjected to numerous legal claims with respect to the same product. These claims occur despite the fact that the labeling for the prescription drug fully warns of known adverse effects and the drug itself may be dispensed to patients only upon the prescription of a licensed practitioner.

PMA member companies are thus regularly defendants in product liability lawsuits. In addition many PMA members are self-insurers since private insurance to cover the company's exposure in such litigation is not currently available.

PMA member companies establish aggregate reserve funds based upon estimates of the costs of defending and settling individual product liability lawsuits. Company reliance on aggregate funds estimates is a prudent internal approach and an accepted accounting procedure in product liability litigation where there are multiple claims with respect to the same product, not only in instances when the company is a self-insurer but also when a private insurance carrier is involved.

The PMA has reviewed G.D. Searle & Co's petition which adequately presents the reasons why the Court should review the Eighth Circuit's decision. The legal issue of discovery of aggregate fund estimates is of

widespread importance to the research-based pharmaceutical industry. PMA urges the Court to grant the petition.

Respectfully submitted,

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